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TRADEMARK  
Docket No.: 058789.9040

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

RECOTON AUDIO CORPORATION,

Opposer,

v.

ADVENT NETWORKS, INC.

Applicant.

Opposition No. 91150749

Serial No. 76/033,895

Mark: ADVENT NETWORKS



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**ADVENT NETWORKS' OPPOSITION TO OPPOSER'S  
MOTION FOR RECONSIDERATION AND FOR SUBSTITUTION**

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## **I. INTRODUCTION**

Through a Motion for Reconsideration and for Substitution, Electronics Trademark Holding Company, LLC, ("ETHC") wants to set aside a judgment entered against its predecessor Recoton Corporation ("Recoton") and commence this opposition anew, although the trademark application of Advent Networks, Inc. ("Advent Networks") at issue published nearly two years ago on December 18, 2001. Advent Networks opposes the motion for reconsideration of ETHC, which in effect constitutes a belated attempt to set aside the judgment this Board entered dismissing with prejudice after a motion for summary judgment the ill-founded Notice of Opposition Recoton filed against the pending application for the mark ADVENT NETWORKS.

Simply stated, the Recoton/ETHC motion at issue does not meet the "excusable neglect" requirements of Federal Rule of Civil Procedure 60(b)<sup>1</sup> and, in any event, the motion is futile. As demonstrated in Applicant's opposition to Recoton's motion for summary judgment, the opposition is and was ill-conceived. In the end, whatever its motion may be labeled, Recoton/ETHC simply can not prevail in any opposition proceeding and Advent Networks should not be put to the cost of once again demonstrating that its mark ADVENT NETWORKS remains entitled to registration.

## **II. STATEMENT OF FACTS**

On April 26, 2000, Advent Networks filed its intent to use trademark application, the subject of this opposition. The Examining Attorney approved Advent Networks' trademark application for ADVENT NETWORKS for "computer software for telecommunications

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<sup>1</sup> A request for amendment to the judgment does not lie pursuant to Federal Rule of Civil Procedure 59(e). Such a request must be filed no later than 10 days after entry of judgment. Here judgment was entered on October 6, 2003, while the Recoton/ETHC motion was filed a month later on November 6, 2003.

purposes, namely, for a digital interface for connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network for the delivery of digital information in a high speed electronic format including video, text, and audio content; computer hardware for telecommunications purposes, namely, a digital interface connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network; electronic hardware and software computer interfaces for connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network; fiber optic network equipment, namely optical switches, optical transceivers, wavelength division multiplexing (WDM) combiners, WDM splitters, and WDM selectors for using rf signals in the television bandwidth; computer hardware, namely, optical transmitters, receivers, coaxial fibers, rf amplifiers, quadrature amplitude/phase modulation modems, and amplitude/phase modulators for enabling telecommunications over a hybrid fiber coaxial network.” The application was published on December 23, 2001. In the time between the filing of the application and its publication, Advent Networks, which has used its trade name Advent Networks since 1999, used its ADVENT NETWORK mark on product in interstate commerce in at least as early as January 3, 2001. Burt Decl. in Support of Opposition to Summary Judgment ¶ 2.

Nonetheless, in January 2002, Recoton opposed Advent Networks’ application for the mark ADVENT NETWORKS, relying on one registration it owned for the mark ADVENT. Notice of Opposition ¶ 1. The registration that Recoton relied on its opposition for the mark ADVENT, Registration No. 1,008,947, covered “audio equipment, namely, microphones, microphone preamplifiers, frequency balance controls, noise reduction units and loudspeakers” and “tape decks and accessories therefor, namely, head cleaning tapes and dust covers.” *Id.* On its face, the goods covered by the ADVENT marks Recoton relied on were distinct from those

covered by Advent Networks' pending trademark application for ADVENT NETWORKS. Nowhere in its ill-conceived Notice of Opposition or Motion for Summary Judgement did Recoton even allege, let alone establish, that it owned or used the ADVENT mark for goods covered by the ADVENT NETWORKS application. Indeed, nowhere did Recoton allege, let alone establish, that Recoton and Advent Networks competed for business, directly or indirectly, or that their respective products could be characterized as related or even complementary.<sup>2</sup>

Recoton's ADVENT products were sold to consumers for their audio needs. Alpert Decl. in Opposition to Motion for Summary Judgment ¶ 2. Indeed, in press releases that it attached to support its Motion for Summary Judgment, Recoton described itself as a "consumer electronics company." Kennedy Aff. in Support of Motion for Summary Judgment, Attach. F. Further Recoton expressly stated that only "[a]udio products are offered under the Advent...brand name[s]." *Id.* Thus, by its own admission, the ADVENT brand as used by Recoton covered consumer audio products such as speakers, *not* the type of telecommunications infrastructure products Advent Networks offers and sells under the ADVENT NETWORKS mark.

It is indisputable that Advent Networks does not use, and does not seek to register, its ADVENT NETWORKS mark for speakers of any type or even consumer audio products of any type. Advent Networks is not a consumer-oriented company. Rather, Advent Networks offers and sells its products to the cable industry. Burt Decl. in Opposition to Summary Judgment ¶¶ 2-3. As the company page of the Advent Networks' web site expressly stated:

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<sup>2</sup> Recoton/ETHC relies in its proposed new opposition on pending applications for the mark ADVENT, but to no avail. The same analysis continues to apply to the merits of its claim. Indeed, it is not clear as to the pending intent-to-use applications even if ETHC properly acquired the rights to these applications. That said, this issue does not have to be reached here, since the motion fails for other entirely separate reasons.

Advent Networks has pioneered the first business-class IP access platform for the cable industry that operates on unmodified hybrid fiber-coax (HFC) networks. The Ultraband™ system provisions dedicated, switched IP connections that are scalable from 5-40 MBPS per customer . . . With the Ultraband system, *cable operators* can penetrate the \$69 Billion small- and medium-sized business market without building a parallel network or making extensive network upgrades.

*Id.* ¶ 7, Ex. A (emphasis added). Indeed, articles written about Advent Networks are directed to cable operators, not consumers. *Id.* ¶ 6, Ex. B–F. Cable operators necessarily constitute sophisticated purchasers who will not associate and have not associated Advent Networks with Recoton or its ADVENT brand products. *Id.* ¶¶ 4-5.

The multitude of other ADVENT based marks in use and/or registered as trademarks confirm as well that the ADVENT mark of Recoton/ETHC must be narrowly construed and not found confusing with ADVENT NETWORKS. For example, ADVENT INX, Registration No. 2591241, is registered to Advent Technology, Inc. for “computer software and instructional manuals sold as a unit for use to display, report, track, calculate, customize and manage financial data through use of electronic, optical and wireless communications networks.” Rapinett Decl. in Opposition to Summary Judgment ¶ 3, Ex. C (TESS Printout); *see also Id.* ¶ 4, Ex. D (registration 2517374 (ADVENT for computer software for use in the fields of financial management, investment tracking, portfolio analysis, etc.)). Evidence of the use of the ADVENT INX mark as well as other ADVENT marks, including the ADVENT mark, can be found at [www.advent.com](http://www.advent.com). *Id.* By way of example only, a search of the United States Patent and Trademark Office reveals numerous ADVENT based registrations, including ADVENT DESIGN, Registration No. 2162934, for “consultation in the field of computer hardware design and manufacturing owned by Advent Design and use found at [www.adventdesign.com](http://www.adventdesign.com); ADVENT, Registration No. 2269106, owned by Rapport Composites U.S.A., Inc. for gold club

shafts and use found at [www.goldeneaglegolf.com](http://www.goldeneaglegolf.com); ADVENT, Registration No. 2210915, owned by Interactive Technologies, Inc. for security alarm systems and use found at [www.adventsecurity.com](http://www.adventsecurity.com); ADVENT, Registration No. 1537494, owned by American Recreation Company, Inc for “bicycle accessories, namely cycling gloves and use found at [www.plaines.com](http://www.plaines.com); and ADVENT, Registration 1269658, owned by Lightolier Incorporated for “electrified lighting tracks” and use found at [www.lightolier.com](http://www.lightolier.com), among others. *Id.* ¶¶ 5-9, Ex. E-I.

A Google Internet search serves to confirm the wide array of ADVENT based marks in use. *Id.* ¶ 10. There you find such additional uses as [www.adventcomputers.com](http://www.adventcomputers.com), [www.adventair.com](http://www.adventair.com), [www.adventsys.com](http://www.adventsys.com) and [www.adventtech.com](http://www.adventtech.com), among others. The Internet also reveals consumer products bearing ADVENT brands, including the ADVENT mark used by Advent Computers for personal computers. *Id.*

Apparently, the Recoton/ETHC ADVENT mark coexisted and continues to coexist with all these third party registrations and uses without encountering any confusion although certain of these uses can only be viewed as directed to the same customer base to which Recoton apparently directed its ADVENT brand products. Yet, Recoton/ETHC made no mention of its coexistence with these third party uses in its original Notice of Opposition or in its proposed Amended Notice of Opposition. Rather, it continues to paint what only can be characterized as a misleading picture, making it seem that Recoton/ETHC is the sole owner of the ADVENT mark, when it plainly is not.



### III. ARGUMENT

#### A. THE MOTION DOES NOT, AND CANNOT, MEET THE APPLICABLE STANDARD FOR RELIEF FROM FINAL JUDGMENT.

Relief from a final judgment is an extraordinary remedy to be granted only in exceptional circumstances. *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). A motion for relief from a final judgment here only could be founded on “excusable neglect.” That said, the showing made in the moving papers simply does not come close to establishing “excusable neglect.” See J. Thomas McCarthy, *McCarthy On Trademarks and Unfair Competition*, Vol. 3, 4th Ed., Motion to Set Aside Judgment, 20:134, at p. 20-210. (“Excusable neglect has been held not proven by absence of an attorney from the office and pressure of work, or lack of legal knowledge”).

Judgment in favor of Advent Networks was entered in this matter by this Board on October 6, 2003. This judgment came after the close of discovery in this matter and only after Recoton filed a Motion for Summary Judgment. In denying the Motion for Summary Judgment, the Board required that Recoton submit and serve an amended Notice of Opposition within thirty days of May 1, 2003. TTAB Order, dated May 1, 2003.<sup>3</sup> Recoton filed nothing in response to this order – not on May 31, 2003 nor at any time before the Board entered judgment in this matter on October 6, 2003.

That is so even though by the very allegations of ETHC’s motion for reconsideration and the supporting declaration of Patrick M. Lavelle filed in support of the ETHC motion, ETHC claims that it acquired by assignment the marks at issue on July 8, 2003 and recorded its assignment of marks with the United States Patent and Trademark Office no later than

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<sup>3</sup> The Board did not provide for the reopening of discovery in this matter which closed in November 2002.

August 25, 2003. Decl. of Lavelle 3, 4. What ETHC and Mr. Lavelle conspicuously fail to explain is why no action was taken any sooner to respond to the Board's Order even though the Board's Order was publicly available on the TTAB online database. Rather, ETHC merely relies on the red herring excuse that counsel of record in the opposition left the employ of Recoton in December 2002, that the Recoton legal assistant left the employ of Recoton in February 2003, and that Recoton at some later point filed for bankruptcy. Motion at 5. Recoton, nor its general counsel, nor its legal assistant, nor ETHC, nor its counsel, nor its current manager, has attempted to explain why (1) it failed to notify Advent Networks or the Board of a new contact for the opposition after Mr. Loan Kennedy left Recoton in December 2002; (2) why Mr. Kennedy remained counsel of record in this proceeding for nearly a year after he left Advent; (3) why ETHC did not make an appearance in the proceeding in July or even August 2003; (4) why ETHC appears not to have made any efforts to notify this Board of the assignment of the ADVENT mark; and (5) why ETHC took apparently no steps to check even the TTAB electronic database regarding this opposition proceeding before October 2003. It is not this Board's fault or Advent Network's fault that Recoton/ETHC did not bother to change its counsel of record in this proceeding or exercise even a modicum of care to stay current on the opposition proceeding and specifically the summary judgment motion it affirmatively filed against Advent Networks. Indeed, based on the information Recoton/ETHC has put forward in support of its motion, Recoton/ETHC took no action in this opposition proceeding for nearly a year -- from December 2002 until November 2003. Advent Networks should not be prejudiced by the failure of Recoton and its successor ETHC actively to take steps for nearly a year to monitor and properly maintain the opposition.

Advent Networks, a small company, has spent substantial time and money defending the opposition, opposing the baseless Motion for Summary Judgment, and protecting its rights to its ADVENT NETWORKS trademark application. It is being forced once again to spend time and money here opposing this baseless motion. At the same time, it has been using its name since 1999 and its ADVENT NETWORKS mark since January 2001, nearly three years, without experiencing any actual confusion with Recoton/ETHC and Recoton/ETHC alleges no such actual confusion in any pleading it has filed to date.

Thus, even if ETHC's Motion is properly characterized as a Motion for Relief from Final Judgment, it remains misguided and should be denied. *See* TBMP Rule 544; Fed. R. Civ. P. 60 (b). Under Federal Rule of Civil Procedure 60 (b), which necessarily applies here since judgment has been entered in this matter, the judgment may be set aside only if there has been specific circumstances of "excusable neglect". These circumstances have not been met here. *See Marriott Corp. v. Pappy's Enterprises, Inc.*, 192 USPQ 735 (TTAB 1976) (opposer's failure to maintain communication between its staff counsel due to inattention and carelessness does not constitute excusable neglect); *Williams v. Five Platters, Inc.*, 181 USPQ 409 (TTAB 1974), *aff'd*, 510 F. 2d 963 (CCPA 1975) (petitioner's argument that its neglect resulted from the absence of petitioner's counsel from its office does not constitute excusable neglect).

Excusable neglect can not be found here, where ETHC by its own admission allegedly acquired the Recoton ADVENT marks back in July 2003, but did not nothing to alert this Board as to that acquisition until four months later in November 2003, after the Board properly entered judgment in this matter. Again, counsel for ETHC would not have had to do much other than check the online database of the United States Patent and Trademark Office in order to ascertain the status of the opposition. The TTAB database clearly discloses on the electronic docket for

this matter, "entry 15," dated "2003-05-01," "MOT FOR S.J. DENIED; PL'S AMENDED NOTICE OF OPP DUE 30 DAYS". It is indisputable that this order was a matter of public record for all to take note who were interested. Thus, Recoton/ETHC can not, and has not, shown even reasonable due diligence here, let alone the required excusable neglect Rule 60(e) and the TBMP requires.

**B. RECOTON/ETHC'S MOTION FOR RECONSIDERATION REMAINS FUTILE**

In all events, the Recoton/ETHC motion for relief from judgment remains futile. Recoton/ETHC has not demonstrated, and can not demonstrate, that it would prevail on the merits in the opposition. Indeed, the evidence of record provides just the contrary. Advent Networks should not be put to the cost and time of demonstrating the merits of its defenses here, yet again, particularly where the proposed amended notice of opposition does not address any of the obstacles to the Recoton/ETHC opposition Advent Networks pointed out in its opposition to the Recoton Motion for Summary Judgment. Indeed, the new opposition proposed to be filed here remains as conclusory in nature as the original notice of opposition Recoton filed nearly two years ago.

**1. The Marks Differ in Terms of Sight, Sound and Meaning**

Advent Network's mark ADVENT NETWORKS is the only mark at issue in this opposition. Recoton/ETHC relies for its opposition only on the Recoton ADVENT mark. Thus, when these marks are reviewed *in their entireties*, they necessarily differ in terms of sight, sound and connotation. With the addition of the word "NETWORKS," Advent Networks mark clearly conveys the nature of its goods as pertaining to a network. In contrast, nothing about audio products can be found to be invoked in the ADVENT NETWORKS mark. As a result, the marks can only be viewed as creating distinct commercial impressions.

2. The Dissimilarity of the Goods for Which the Marks Are Used or Are To Be Used.

On the face of the goods descriptions for which Recoton owns registrations for its mark ADVENT and from its own press releases, Recoton owns and uses the ADVENT mark for audio products. Kennedy Aff. in Support of Motion for Summary Judgment, Ex. F (January 7, 2002 Press Release: "Audio products are offered under the Advent. . . brand name[s]"; "Advent Always Ahead" Press Release: "The Company also produces and markets audio components, high fidelity loudspeakers, home theater speakers and car audio speakers and components which are sold under the Advent . . . brand name[s]").

In contrast, Advent Networks' products on the face of the goods description of its application do not include audio products and specifically do not include speakers of any type. Rather, on the face of its goods description, Advent Networks sells computer hardware and software for an IP access platform that operates on hybrid fiber coaxial (HFC) networks. As its marketing materials state, its technology is aimed at cable operators to provide a transparent overlay into existing HFC networks enabling dedicated bandwidth at much lower cost than fiber based networks. Burt Decl. in Opposition to Summary Judgment ¶ 3. Thus, Advent Networks products simplify traffic management and IP application deployment for cable operators. *Id.* The products simply are not marketed to consumers. *Id.*

3. The Dissimilarity of the Parties' Channels of Trade

The Recoton/ETHC consumer and home audio products and Advent Networks technology platform products necessarily travel in different channels. In an office action for a pending ADVENT application, Recoton, in an attempt to distinguish its ADVENT mark from the mark ICS ADVENT cited against its application, acknowledged to the Trademark Office that "Recoton Audio Corporation markets to the 'home and mobile consumer.'" Alpert Decl. in

Opposition to Motion for Summary Judgment ¶ 2, Ex. A. This same distinction applies here and should be viewed as a binding admission on the part of Recoton/ETHC.

Advent Networks does not market to consumers directly. Its products will not be found and are not found in consumer electronic stores whether brick and mortar stores or online stores. Burt Decl. in Opposition to Motion for Summary Judgment ¶ 3. Indeed, Advent Networks products are directed to cable operators. *Id.* Significantly, articles about Advent Networks have appeared in publications such as *CableWorld* and *XCHANGE*. These are not publications directed to the consumer marketplace. *Id.* ¶ 6. Rather, these publications are cable industry, telecommunication industry publications or business publications. Advent Networks provides the technological platform that enables businesses to offer various services to their clients. *Id.*, ¶ 3.

#### 4. Advent Networks' Customers Are Necessarily Sophisticated Purchasers.

By the nature of the goods it sells and seeks to cover with its application for ADVENT NETWORKS, Advent Networks necessarily offers its products to sophisticated business people. *Id.* ¶ 4. Its target market is sophisticated cable operators and its products are bought only after careful investigation. *Id.*, ¶¶ 3-4. This factor, too, prevents any likelihood of confusion. *See L. J. Mueller Furnace Co. v. United Conditioning Corp.*, 222 F.2d 755, 757-758 (C.C.P.A. 1955) (CLIME-MATIC for air-conditioning units and MUELLER CLIMATROL for air-conditioning apparatus not confusingly similar given that purchase of these goods made after careful investigation); *Kiekhoefer Corp. v. Willys-Overland Motors, Inc. et al*, 236 F.2d 423 (C.C.P.A. 1956) (HURRICANE for auto engines and HURRICANE for outboard motors not confusingly similar as goods not purchased casually); *Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669

(C.C.P.A. 1956) (MAGNAFLUX for electrical apparatus for magnetic testing of metal articles and SONCFLUX for vibromagnetic inspection instrument not confusingly similar, because goods sold to discriminating purchasers).

5. Advent Networks Has Experienced No Actual Confusion

Advent Networks has been using its trade name, Advent Networks, since 1999. Burt Decl. in Opposition to Motion for Summary Judgment ¶¶ 2. Moreover, it has deployed its system under the ADVENT NETWORKS mark since at least as early as January 2001. Sunflower Broadband in Lawrence, Kansas and Everest Connections in Kansas City, Missouri are examples of companies in the United States using the ADVENT NETWORKS technology platform. In addition, it has deployed its product to two of the top five cable operators in the U.S. Advent Networks also has sold its system in foreign commerce. *Id.*, ¶ 2. Yet, Advent Networks has experienced no confusion with Recoton/ETHC or its ADVENT brand products. *Id.*, ¶ 5. Significantly, the proposed Amended Notice of Opposition does not allege any actual confusion although proposed after nearly three years of concurrent use of the Recoton ADVENT mark and the Advent Networks ADVENT NETWORKS mark.

6. The Many Third Party Registrations and Uses Provide Further Evidence That The Amend Opposition Remains Futile.

Conspicuously absent from the Recoton/ETHC Amended Notice of Opposition as well remains any explanation of the impact of other third party uses of ADVENT marks either as registered trademarks or trademarks at common law on Recoton/ETHC's claim of likelihood of confusion here. For example, ADVENT INX, Registration No. 2591241, is registered to Advent Technology, Inc. for "computer software and instructional manuals sold as a unit for use to display, report, track, calculate, customize and manage financial data through use of electronic, optical and wireless communications networks." See Rapinett Decl. in Opposition to Motion for

Summary Judgment ¶ 3, Ex. A (TESS Printout); *see also Id.* ¶ 4, Ex. D (Registration No. 2517374 for ADVENT for computer software for use in the fields of financial management, investment tracking, portfolio analysis, etc.). Evidence of the use of the ADVENT INX mark as well as other ADVENT based marks, including the ADVENT mark alone, can be found at [www.advent.com](http://www.advent.com). *Id.* ¶¶ 3-4, Exh. C. Yet, Recoton/ETHC does not mention let alone disclose this use or its coexistence with Advent Technology or explain why this use can and does coexist without apparent confusion with Recoton/ETHC's use, but that somehow Advent Networks' use remains of concern. It does not because it cannot. Advent Networks' use remains even more distinct given the nature of its goods, the nature of its customers and its channels of trade.

Beyond Advent Technology's registrations and use of ADVENT marks, the record reveals multitudes of other third parties using ADVENT marks. By way of example only, registered marks include: ADVENT DESIGN, Registration No. 2162934, for "consultation in the field of computer hardware design and manufacturing registered to Advent Design and used at [www.adventdesign.com](http://www.adventdesign.com); ADVENT, Registration No. 2269106, registered to Rapport Composites U.S.A., Inc. for gold club shafts and used at [www.goldeneagle.com](http://www.goldeneagle.com); ADVENT, Registration No. 2210915, registered to Interactive Technologies, Inc. for security alarm systems and used at [www.adventsecurity.com](http://www.adventsecurity.com); ADVENT, Registration No. 1537494, registered to American Recreation Company, Inc for "bicycle accessories, namely cycling gloves and used at [www.plains.com](http://www.plains.com); and ADVENT, Registration No. 1269658, registered to Lightolier Incorporated for "electrified lighting tracks" and used at [www.lightolier.com](http://www.lightolier.com). *Id.* ¶¶ 5-9, Exs. E-I.

A Google Internet search serves only to confirm this wide array of uses, as well as a multitude of other uses. *Id.* ¶ 10. The Google Internet search reveals such additional uses as



www.adventcomputers.com, www.adventair.com, www.aadventsys.com and www.adventtech.com. The Internet search reveals consumer products bearing ADVENT brands including ADVENT owned by Simpson Door Company for doors for houses, ADVENT for bicycle gloves, ADVENT for golf shafts and ADVENT for computers, among others. *Id.* Apparently, Recoton coexists with all these third party registrations and uses without encountering any confusion, although certain of these uses only can be viewed as directed to consumers.

It is well-accepted that such uses and/or registrations defeat any likelihood of confusion claim. *See Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 259 (5<sup>th</sup> Cir. 1980) ("The greater the number of identical or more or less similar trademarks already in use on different kinds of goods, the less is the likelihood of confusion."). As the court in *Source Service Corp. v. Chicagoland JobSource, Inc.*, 643 F. Supp. 152, 1 U.S.P.Q. 2d 1048, 1053 (N.D. Ill. 1986), recognized:

Where numerous producers or providers use similar marks. . . consumer many not be at all sure whose mark they are dealing with. . . . Put differently, if consumers don't have a clear sense of what plaintiff's mark represents, they are unlikely to purchase defendant's product or service thinking it is plaintiff's.

Likewise here, Advent Networks use of the mark ADVENT NETWORKS, if anything, remains more distinct from that of Recoton's use of the mark ADVENT than many, if not all, of these third party registrations and common law uses for ADVENT marks with which Recoton appears to co-exist without any apparent likelihood of confusion. This fact alone necessarily precludes any finding of likelihood of confusion and belies Recoton's claims of likelihood of confusion in the original opposition and in the proposed opposition.

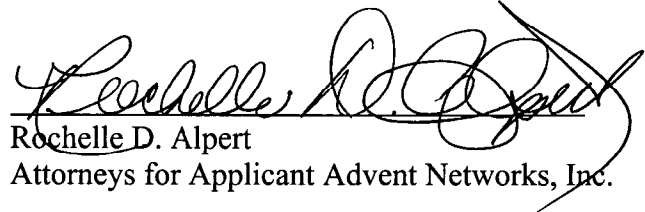
#### IV. CONCLUSION

Each of the above reasons, whether considered alone or in combination, supports the denial of Recoton/ETHC's motion, whatever it is labeled. Advent Networks has spent too much time and money already responding to the baseless claims of Recoton/ETHC. In a crowded field such as the one the Recoton ETHC's mark exists in, the proposed, belated opposition simply can not lie. This matter should not be allowed to be re-litigated anew two years after Advent Networks' application was published at unwarranted cost in terms of time and money to Advent Networks who has been using its trade name since 1999 and its mark ADVENT NETWORKS since 2001 without any confusion or objection. Advent Networks has more than established its rights to own and use its ADVENT NETWORKS' mark for the goods for which it seeks to register its mark.

Dated: November 26, 2003

Respectfully submitted,

By:

  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Opposition No. 91150749

Serial No. 76/033,895

Mark: ADVENT NETWORKS

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8**

BOX TTAB - NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Dear Sir:

I hereby certify that the attached Advent Networks' Opposition to Opposer's Motion for Reconsideration and for Substitution and receipt verification postcard are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: BOX TTAB - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, VA 22202-3514, on November 26, 2003.

Respectfully submitted,

  
Jean Canedo

PROOF OF SERVICE BY MAIL  
DEPOSIT AT BUSINESS

I, Jean Canedo, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On November 26, 2003, I served a copy(ies) of the following document(s):

**ADVENTS NETWORKS' OPPOSITION TO OPPOSER'S MOTION FOR  
RECONSIDERATION AND FOR SUBSTITUTION**

by placing them in a sealed envelope(s) addressed as follows:

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**Party(ies) Served**

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2960 Lake Emma Road  
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I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 26, 2003, at San Francisco, California.

  
\_\_\_\_\_  
Jean Canedo